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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,205	12/22/2000	Charles L. Brabenac	884.336US1	1318

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EXAMINER

TRUJILLO, JAMES K

ART UNIT	PAPER NUMBER
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2116

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/746,205

Applicant(s)

BRABENAC, CHARLES L.

Examiner

James K. Trujillo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5,9 and 12-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-3, 5, 9 and 12-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. It is hereby acknowledged that the following papers have been received and placed of record in the file: Amendment A dated 1/28/04.
2. Claims 2-3, 5, 9 and 12-29 are presented for examination. Applicants have canceled claims 1, 4, 6-8 and 10-11.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. The rejections are respectfully maintained and reproduced infra for applicant's convenience.
5. Claims 2-3, 5, 9 and 12-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham-Cummings, Jr., U.S. Patent 6,182,146 (hereinafter Graham), in view of Applicant's admitted prior art (AAPA).
6. As to claim 2, Graham taught the method according to claim 1 described above. Graham teaches that a packet is sent to the host computer when there is a host application assigned to the port [619, figure 6]. Graham does not expressly disclose wherein when there is a host application assigned to the port, *sending a wake-up message to a host computer* [emphasis added].

AAPA teaches on page 2 lines 7-14 that when a packet reaches its final destination it is detected a sleeping host computer is a sent a wake-up message. The host computers are sleeping to reduce power. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Graham to reduce power by putting the host computer to sleep then sending

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a wakeup message when there is a host application assigned to the port corresponding to the packet. One of ordinary skill in the art would have made the modification because this would allow power consumption to be reduced while still being able to respond only to an appropriate packet, which is desirable in Graham.

7. As to claim 3, Graham and AAPA taught the method according to claim 2 described above. AAPA further taught receiving the wake-up message at the host computer on page 2 lines 7-14. AAPA also teaches changing the host computer from a power-managed state to an operational state within the same paragraph.

8. As to claim 5, Graham taught the method according to claim 4 described above. Graham does not expressly disclose wherein the information comprises executable instructions. In summary, Graham describes determining which applications are to receive packets base on a port identifier for processing, but does not describe the information in the packet.

AAPA taught wherein the information comprises executable instructions (access its resources such as applications or services) [page 2 lines 10-14].

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Graham by having the information comprise executable instruction as taught by AAPA, because it would desirably allow other hosts on the network to access its application or services.

9. As to claim 9, Graham taught the method according to claim 8 described above. Claim 9 is further rejected for the same reasons as set forth hereinabove in the rejection of claim 5.

10.

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11. As to claim 12, Graham taught a signal-bearing media comprising instructions, wherein the instructions when read and executed by a processor comprise:

- a. receiving a packet (raw packet data) at a port filter (packet analysis module 100, figure 3), wherein the packet comprises a port identifier (Destination Port, figures 1 and 2);
- b. determining whether there is host application associated (application identifier on line 209, figure 3) with the port identifier [also 605, 607 and 611, figure 6 and corresponding text];

Graham does not expressly disclose wherein when there is a host application associated with the port identifier, *sending a wake-up message to a host computer* [emphasis added].

AAPA teaches on page 2 lines 7-14 that when a packet reaches its final destination it is detected a sleeping host computer is sent a wake-up message. The host computers are sleeping to reduce power. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Graham to reduce power by putting the host computer to sleep then sending a wakeup message when there is a host application assigned to the port corresponding to the packet. One of ordinary skill in the art would have made the modification because this would allow power consumption to be reduced while still being able to respond only to an appropriate packet, which is desirable in Graham.

12. As to claim 13, Graham combined with AAPA taught the signal-bearing media according to claim 12 described above. Graham further taught wherein when there is not a host application

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assigned to the port, discarding the packet [623 figure 6, col. 7 lines 51-54 and col. 11 lines 14-19].

13. As to claim 14, Graham combined with AAPA taught the claimed method therefore the also teach the claimed signal-bearing media.

14. As to claim 15, Graham combined with AAPA taught the signal-bearing media according to claim 12 described above. Graham further teaches receiving information from a host computer and using the information to carry out a determining element [col. 2 lines 41-44 and col. 5 lines 24-28]. Specifically, Graham teaches that the information is passed to an application associated with an application on a host computer where a determining element is carried out (the packet is processed).

15. As to claim 16, Graham together with AAPA taught the instruction according to claim 15 as described above. AAPA further taught wherein the information comprises executable instructions (access its resources such as applications or services) [page 2 lines 10-14].

16. As to claim 17, Graham together with AAPA taught the signal-bearing media according to claim 15 as described above. Graham further teaches wherein the information comprises data, wherein the data (port data) describes a host application [col. 5 line 59 through col. 6 line 4]. Specifically, Graham teaches extracting data from the packet including the port number that is used to identify an associated host application. Furthermore, it is inherent that data with the packet would be used by an application if the application were found.

17. As to claim 18, Graham together with AAPA taught the signal-bearing media according to claim 15 as described above. Graham further teaches wherein the information comprises data, wherein the data (port data) describes a port identifier [col. 5 line 59 through col. 6 line 4].

Specifically, Graham teaches extracting data from the packet including the port data that is used to identify an associated host application.

18. As to claim 19, Graham together with AAPA taught the signal-bearing media according to claim 12 described above. Graham further teaches detecting a port in use by the host application (application to port mapping table) [col. 5 line 66 through col. 6 line 1]. Graham also teaches selecting information based on the port in use by the host application (application identifier) [col. 6 lines 4-10]. Finally, Graham teaches sending information to the port filter, wherein the port filter uses the information carry out the determining element (determines which application is appropriately handle the packet and the packet is sent to an application for processing) [col. 6 lines 18-21 and col. 7 lines 43-45].

19. As to claims 20-22, they are rejected for the same reasons as set forth in the rejections of claims 16-18 respectively.

20. As to claims 23-29, Graham together with AAPA taught the claimed signal-bearing media therefore they also teach the claimed apparatus.

21. Applicant's arguments filed January 28, 2004 have been fully considered but they are not persuasive.

22. In the remarks, applicants argued in substance that the Office Action did not make out a *prima facie* case of obviousness because there is no evidence of a suggestion to combine the cited references. The applicants further argue in substances that the suggestion to combine must come from the prior art and not the Applicant's specification or from impermissible hindsight.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either *in the references themselves or in the knowledge generally available to one of ordinary skill in the art* (emphasis added). See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, as addressed in the last office action, Graham teaches receiving a packet at a port filter, wherein the packet comprises a port number. Graham further teaches determining whether there is a host application associated with the port number. Lastly, Graham teaches when there is not a host application associated with the port number, discarding the packet. The Applicant's Admitted Prior Art (AAPA) suggests, on page 2 beginning on line 7, that a host computer would save electricity by entering a power-managed state when it is not receiving packets. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Graham by having the host in a power managed state when it is not receiving packets and when there is a host application assigned to the port number, sending a wake-up message to the host computer. One of ordinary skill would have made the modification upon looking both of the prior art teachings because of the advantages taught by the AAPA, namely saving electricity. Thus, suggestion comes from the prior art and is not impermissible hindsight. Both Graham and AAPA are directed toward recognizing packets in a network.

Further, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any

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judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

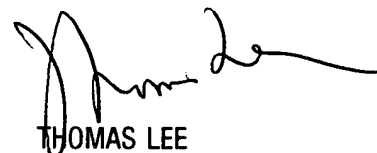
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James K. Trujillo whose telephone number is (703) 308-6291. The examiner can normally be reached on M-F (7:30 am - 5:00 pm) First Friday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Lee can be reached on (703) 305-9717. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Trujillo
March 29, 2004



THOMAS LEE
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